

## **750 KAR 1:010. Commission procedures.**

RELATES TO: KRS 157.420, 157.440, 157.611, 157.615, 157.617, 157.620, 157.622, Pub.L. 111-5

STATUTORY AUTHORITY: KRS 157.617(1), 157.622(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.617(1) authorizes the School Facilities Construction Commission (SFCC) to promulgate administrative regulations for the orderly conduct of its affairs, including assisting local school districts to meet the school construction needs of the state. KRS 157.622(4) requires the SFCC to promulgate an administrative regulation governing allocations of state funds to eligible school districts. This administrative regulation establishes the procedures the SFCC utilizes in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project, and allocating savings from refinancing.

Section 1. Definitions. (1) "Available local revenue" is defined by KRS 157.615(1).

(2) "Daily interest" means the total interest divided by the number of days in the first coupon.

(3) "Eligible district" is defined by KRS 157.615(16).

(4) "Level repayment schedule" means a repayment schedule in which the combined annual amount of principal and interest payments for each issue of bonds remains relatively constant over the life of the issue.

(5) "Maximum annual repayment amount" means the maximum aggregate total of SFCC annual payments for all bonds issued for a particular school district in which the SFCC has participated. If a bond series has been refunded, the original issue and debt schedule shall be the one used in making this computation.

(6) "Offer of assistance" means the amount available for a school district from a current biennium along with any allocation available from a prior period which has not expired according to KRS 157.622(5) and (6).

(7) "SFCC" means the School Facilities Construction Commission.

(8) "Total interest" means the first gross interest payment of the debt service for the SFCC portion of the schedule.

Section 2. Eligibility. (1) The SFCC shall use the statement of need and available local revenue as certified by the Kentucky Board of Education in determining the rate of participation of each school district in any given biennium. Eligibility for participation as established in KRS 157.620(1) shall be certified by the Kentucky Board of Education.

(2) A school district retaining capital outlay funds in its current expense general fund under the provisions of KRS 157.420 in the year preceding the biennium in which funds are available or during the biennium shall be ineligible to participate in the SFCC Program during that funding period.

Section 3. Rate of Participation. (1) The rate of participation of each eligible district shall be determined by dividing the unmet needs of that district by the total unmet needs of all eligible districts and multiplying that fraction times the total new debt service budgeted for the biennium.

(2) If there are insufficient funds budgeted in the first year of the biennium to fund all the requests, bond sales shall be scheduled in the order in which the SFCC receives requests for approval of bond sales.

(3) All bond sales may proceed after January 1 of the first year of the biennium.

Section 4. Offer of Assistance. Upon certification of the rate of participation by the SFCC, the Executive Director of the SFCC shall notify each eligible district of its entitled rate of participation and the requirements to be met if it wishes to accept the offer of assistance. These requirements shall include:

- (1) The amount of local revenue to be expended as certified by the Kentucky Board of Education;
- (2) The priority order of facilities to be built as certified by the Kentucky Board of Education; and
- (3) The sequence of events and deadlines to be met if the local school district accepts the offer of assistance.

Section 5. Acceptance of Offer of Assistance. (1) Within thirty (30) days of receipt of the offer of assistance, the local board of education shall notify the SFCC of acceptance or rejection of the offer of assistance. The local district response shall indicate the amount of the offer it plans to commit to construction or renovation immediately and the amount it wishes to count as cumulative credit.

(2) A district not responding within thirty (30) days shall be declared ineligible and the offer of assistance shall be withdrawn and redistributed to the eligible recipients. In extenuating circumstances and upon written request within the original thirty (30) day period, a single thirty (30) day extension shall be granted by the Executive Director of the SFCC.

Section 6. Review of Building Plans. The review and approval of building plans shall be the responsibility of the Kentucky Department of Education.

Section 7. Allowable Expenditures of Funds. (1) Funds available from available local revenue shall be expended before funds generated by bond sales authorized by the SFCC.

(2) Funds available for a project shall be expended for the purpose of major renovation or construction of the identified project except that the balance of funds remaining after the completion of the project may be expended on the next project on the approved facilities plan of the respective districts.

(3) Project costs may include site acquisition, providing architectural and engineering services, financial and legal services, and equipment.

(a) The site acquisition cost shall be limited to the lesser of:

1. The actual cost of acquiring a site; or
2. The fair market value of the site as determined by a qualified appraisal obtained by the SFCC and charged to the project account.

(b) Construction costs shall not include the cost of supplies. An item shall be considered a supply if the item:

1. Does not retain its original shape, appearance, and character with use;
2. Loses its identity through fabrication or incorporation into a different or more complex unit;
3. Is expendable. An item shall be expendable if it is more feasible to replace, rather than repair, an item that has been damaged or has lost or worn parts;
4. Is expected to serve its principal purpose for less than ten (10) years, even with reasonable care and maintenance;
5. Is not an integral part of the building. An item shall be an integral part of a building if it:
  - a. Is permanently fastened or attached to the building;
  - b. Functions as part of the building, meaning that the item is essential for the building or site to be used for its intended purpose; or
  - c. Will cause appreciable damage to the building if removed; or
6. Does not enhance the value of a bondholder's collateral or the project.

- (4) SFCC funds or funds from the restricted account shall not be used to:
  - (a) Purchase a site not approved by the Kentucky Department of Education in accordance with 702 KAR 4:050; or
  - (b) Reimburse the local board of education for a site acquired before enactment of KRS 157.611.

Section 8. Bond Issuance Procedures. (1) Upon acceptance of an offer of assistance by a local school district, the SFCC shall determine if the local school district or the SFCC shall issue the bonds. Local school districts may request authority from the SFCC to issue the bonds through a city, county, or other agency and instrumentality of the Board of Education.

(2) If the SFCC grants permission to issue bonds at the local level, the procedures for issuing the bonds shall be as follows:

- (a) The local board of education shall obtain the services of a financial advisor;
- (b) The contract with the financial advisor shall be submitted to the SFCC for final approval after signature by the local school district and the financial advisor; and
- (c) The local board of education shall obtain the services of a licensed trustee, paying agent, and registrar.

(3) If the size of the bond issues is less than \$1,000,000 or there is no local participation in the repayment, the SFCC may determine that it is in the best interests of the SFCC and the local school board for the SFCC to manage the bond sale procedures. If the SFCC determines that it is in the best interest of the SFCC and the local school board for the SFCC to manage the bond sale procedures:

- (a) The bonds shall be sold in the name of the SFCC;
  - (b) The SFCC shall obtain the services of a financial advisor;
  - (c) The SFCC may combine multiple projects into single bond issues; and
  - (d) The SFCC shall obtain the services of a licensed trustee, paying agent, and registrar.
- (4) The following procedures shall be followed by all participating districts in construction of SFCC debt service schedules:

(a) The SFCC's portion of the bond sale shall be limited to a twenty (20) year issue, with a level repayment schedule. The maximum annual repayment amount shall not exceed the offer of assistance from the SFCC.

1. The debt service schedule shall have twenty (20) years of payments based on six (6) month intervals or forty (40) payments. If the payments begin so that only one (1) payment is made in the first fiscal year of the schedule, payments may extend over twenty-one (21) fiscal years, if the amounts of the first and last payments combined do not exceed the amount of one (1) annual payment.

2. Annual payments shall be based on a fiscal year. The fiscal year of the SFCC shall begin on July 1 and end the following June 30. All schedules shall be prepared in a way that annual amounts based on a fiscal year are presented in a clear, easy-to-read format while each interest and principal payment is both segregated and totaled by payment period.

(b) The local school district's portion of the bond sale shall be structured to meet the unique financial needs of the district. Debt service on the bonds issued shall include the minimum amount required for eligibility to participate in the program as certified by the Kentucky Board of Education. The minimum term of the local bond issue to meet eligibility criteria shall be twenty (20) years. At the discretion of the local board of education, the bond issue may include a local contribution to debt service in excess of the minimum required, and the length of the local portion of the repayment schedule may exceed twenty (20) years.

(c) Interest collected and accrued on funds derived from the bond sale shall be allocated to the debt service schedules of the school district and the SFCC in the same proportions as its respec-

tive participation in the bond issue.

1. For allocation purposes, each month shall be calculated as thirty (30) days.

2. The accrued interest allocated to the SFCC shall be calculated by multiplying the number of days times the daily interest.

3. The number of days shall be calculated from the issue date of the bonds to the day the bonds are delivered, excluding the day of settlement.

4. If local payments are involved in the bond issue, the accrued interest available to the local district shall be calculated as required by subparagraph 2 of this paragraph.

(d) The proceeds of the bond sale shall be continually invested until expended on the project or until the project is completed. Any remaining proceeds or investment income received after completion of the project shall be applied to the debt service. Credit against the district's and the SFCC's debt service schedule shall be applied in the same percentage as the participation in the bond issue or, if permitted by the bond resolution or indenture, excess funds may be applied to an approved project next in order priority.

(e) A certificate of project completion shall be filed with the SFCC by the local school district. The certification shall summarize the application of the bond proceeds, investment earnings, and any remaining funds from either source. The certificate shall also verify the use of cash contribution as may be required for eligibility by the local school district.

(f) Fees paid to a financial advisor shall be in accordance with this paragraph. A fee that exceeds this schedule shall be paid by the local board of education.

1. The maximum fee for services and expenses of a fiscal agent shall be the highest amount according to the following schedule:

a. \$7,500, for any amount of bonds issued;

b. \$11 per \$1,000, if the bond amount is under \$1 million;

c. \$10 per \$1,000, if the bond amount is between \$1 million and \$2 million; or

d. \$4 per \$1,000, if the bond amount is over \$2 million.

2. The fee shall:

a. Be based upon the amount of bonds actually issued;

b. Include attorney fees, printing of bonds and official statements, advertising the bond issue, travel of the fiscal agent, and other normal expenses related to the bond closing; and

c. Not include a title search or rating service.

**Section 9. Cumulative Credit.** Any eligible district which fails in any budget period to receive an allocation of state funds sufficient to fund the first priority project on the approved facilities plan of the district may request the approval of the SFCC to accumulate credit subject to the availability of funds, for its unused state allocation for a period not to exceed eight (8) years. Districts which receive funds in excess of those required to complete the first project may apply those funds to the next priority project on their approved facilities plan. If there are insufficient funds to complete the next project, those funds may accumulate as previously outlined. All fund credit accumulated in this manner shall be forfeited at any time that the local district fails to accept an offer of assistance tendered to the district.

**Section 10. Refinancing Savings.** Savings that occur as the result of a refinancing in which the SFCC was a participant shall be divided as follows and in the following order or priority:

(1) If the SFCC's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service can be maintained on behalf of the SFCC, it shall be maintained at the same annual amount; therefore, lowering the local district's account for annual debt service payments by the amount of the total savings on the refinancing. Consequently, the bonding capacity of the local district shall be increased allowing the district to pursue its next facili-

ty priority. Any accrued interest shall be deemed a part of the total savings.

(2) If the SFCC's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service paid on behalf of the SFCC is greater than the annual debt service of the refinanced bond issue debt, annual savings generated shall be added to that school district's cumulative credit with the SFCC. These credits shall not have an expiration time period for their use.

Section 11. Notwithstanding any other provision of this administrative regulation that conflict with the provisions of this section, and pursuant to the applicable provisions of the American Recovery and Reinvestment Act of 2009, (ARRA), Pub.L. 111-5, and Notices 2009-30 and 2009-35 issued by the U.S. Department of the Treasury, the SFCC shall be authorized to take advantage of any and all provisions to maximize and realize benefits and favorable treatment related to the structuring of financial bond transactions to or on behalf of the eligible school districts even if portions of the prospective financing arrangements conflict with any other provision of this administrative regulation. (12 Ky.R. 1962; eff. 7-2-1986; 17 Ky.R. 2875; eff. 5-3-1991; 22 Ky.R. 627; 906; eff. 11-2-1995; 25 Ky.R. 1959; 2369; eff. 4-5-1999; 33 Ky.R. 234; 768; eff. 10-6-2006; 36 Ky.R. 1339; 2062-M; eff. 4-2-2010; Crt eff. 7-25-2018.)